

Elk Township Planning and Zoning Board Meeting

Regular Business Meeting

November 14, 2012

Call to Order: Chuck Nicholson called the meeting to order at 7:30pm.

Roll Call:

Present: Mayor Phil Barbaro, Bill Carter, Chuck Nicholson, Eugene Shoultz, Wayne Swanson, Frank Goss, & Jeanne White (arrived at 7:31pm)

Absent: David McCreery, Rich Tondo, Ed McKeever

Also present were the Board's professionals: Leah Furey Bruder, Planner-Bach Associates, Corey Gaskill, Engineer-Fralinger Engineering, and Joan Adams, Solicitor, Adams & Adams.

Open Public Meeting Act: read by the Board Secretary

Flag Salute: led by Chairman, Chuck Nicholson

Announcements:

- Notice to Public and Applicants: Board policy is no new business will commence after 10:30 pm and all testimony will stop at 11:00 pm, except for individuals wishing to speak during the general public session.

➤ **General Business:**

- Approval of minutes of October 17, 2012

Mr. Shoultz moved to approve the minutes of October 17, 2012. Seconded by Mrs. White. With all members in favor, the motion was carried.

- **Resolutions:**

2012-16 a resolution clarifying resolution number 2011-20 which memorialized an extension of the vested rights period for the Silvergate general development plan (referred to as a master development plan approval) with conditions, by the applicant, Silvergate Associates.

Mr. Nicholson moved to adopt resolution 2012-16, Seconded by Mr. Shoultz.

Roll Call:

In favor: Barbaro, Carter, Shoultz White Against: None Abstain: None 4-0-0`

➤ **Old Business:** None

➤ **New Business:**

- **McDonnell- Completeness hearing followed by Public Hearing, application # SD-12-05-Minor Subdivision (lot line adjustment) block 171, lots 21 & 23, 511 Fairview Rd.**

Applicant Frank McDonnell, 511 Fairview Road was sworn in by board attorney, Joan Adams.

Mr. McDonnell handed out a revised plan to comply with changes requested by the board's Engineer, Corey Gaskill. One of the changes made, eliminated the need for a variance and as a result this application is for a minor subdivision which does not require formal public notice.

Board Planner, Leah Bruder, reviewed her letter of November 5, 2012. Lots 21 & 23 are adjacent residential lots and the applicant proposes to shift lot lines so that there will be a total of two modified

residential lots. The properties are located on Fairview Road and are divided by the municipal boundary of Clayton Borough, so that the fronts of the lots, with improvements, are in Elk and rear are in Clayton (with separate blocks and lots). The lot lines will be reconfigured and both lots will still be conforming lots in size and setbacks.

The applicant requested the following waivers from the submission checklist as they are proposing a minor subdivision with no new construction:

#8 copies of applications/approvals/certification from all outside agencies with jurisdiction.

Complies. (Applicant received Clayton Borough PB approval on 9/19/12, by resolution 11-2012)

#11 source & date of current or re-certified property survey within one year.

Complies by revised plan.

#12-plan certification and monumentation as required by Map Filing Law-

Condition of approval. May be waived for "completeness" must add book & page of the deed reference as the horizontal datum

#14 Tax certification-

Complies.

#20 certified property owners list within 200 feet

Complies

#21 waiver statement.-provide justification for waivers requested.

Complied (outlined in planner's letter of November 5, 2012)

#25 plan scale

Wavier, engineer has no objection to the scale submitted.

#36 current title policy-

Complied for lot 21 but not lot 23. Property owner of lot 23 was present and had his deed (Walter Carroll).

Mr. Carroll was sworn in, with his address being 503 Fairview Road. He testified that he and his wife are the titled owners of lot 23 and no one else. Further that there are no restrictions to his ability to subdivide the lot, or other easements that run through the parcel of the land being conveyed to his neighbor. Board attorney was satisfied with his testimony.

#38 photos.

Complies

#41 location of septic

Waiver, -not shown for lot 23 but the applicant indicates the new line will not have any impact on existing septic.

#55 plan with contours at 20 foot intervals for the entire tract within 100 feet

Waiver is recommended by Engineer.

#57 grading plan.

Waiver is recommended as no construction or disturbance is proposed

#58 soil erosion and sediment control plan.

Waiver is recommended as no construction or disturbance is proposed

#59 location of soil borings to determine soil suitability and indication of whether topsoil will be transported and/or removed.

Waiver

#67 results and locations of percolation tests

Waiver is recommended as no construction or disturbance is proposed

#73 LOI (Letter of Interpretation from DEP, presence or absence of wetlands) or provide a signed statement from an engineer

Condition of approval -the applicant's surveyor will add the statement to the plan.

#75 submission of a utility Plan

Waiver is recommended as no construction or disturbance is proposed

#83 curb opening details shown on plan

Waiver is recommended as no construction/driveway is proposed.

Board Engineer added, the revised plan addresses a comment in his letter of September 19, 2012 of the proposed property line not being parallel with either of the existing side property lines for the lots

Mr. Carter moved to grant the waivers as discussed and deem the application complete. Seconded by Mrs. White.

Roll Call:

Voting in favor: *Barbaro, Carter Nicholson, Shoultz, Swanson, White, Goss*

Against:

Abstain:

7 yes, 0 - 0

- **Frank McDonnell - Public Hearing, application # SD-12-05-Minor Subdivision (lot line adjustment) block 171, lots 21 & 23, 511 Fairview Rd.**

Mrs. Bruder reviewed the balance of her review letter of November 5, 2012. She added the lots are located in the MD zoning district where the minimum lot sizes are 25,000 sq ft. The application will remove an existing variance for an existing garage rear yard set back for lot 21.

The applicant testified there are no sidewalks in the area. Also the applicant did provide an aerial photograph at the request of the Board Planner. Further, Mrs. Bruder added she did not have any further comments or objections to the application, it is conforming. Board Engineer also had no further comments or concerns. Mrs. Adams added that any conditions discussed during the completeness hearing will be part of any approval granted. Further the Clayton Borough has already granted minor subdivision approval.

Mr. Shoultz moved to open to the public, Seconded by Mr. White. With all members in favor, the motion was carried. With no comment from the public, Mr. Shoultz moved to close the public portion, seconded by Mrs. White. With all members in favor, the motion was carried.

Mayor Barbaro moved to grant the minor subdivision with the conditions as discussed, Seconded by Mrs. White.

Roll Call:

Voting in favor: *Barbaro, Carter, Nicholson, Shoultz, Swanson, White, Goss*

Against:

Abstain:

7 yes

- Falzarano- Completeness Hearing, application #ZB-12-06, -Bulk Variances for accessory structures, block 33, lot 10, 172 Unionville Road
Applicant: Kristen Falzarano

Steven Passarella, Esquire
Tiffany Cuvillo, PP, 359 Superior Road, Egg Harbor Twp., NJ
Kristen Falzarano, 172 Unionville Road, Glassboro, NJ
All were sworn in by board attorney.

Mr. Passarella summarized the application is for bulk variances for various accessory structures. The property currently contains a single family dwelling, 3 detached garages, 1 green house, 2 sheds, 1 pump house for irrigation and 3 stables (2 at 10x10 and 1 at 22x38.5) along with some fencing. Some structures were there when the property was purchased in 2004 and some were added.

Mrs. Bruder reviewed her letter of October 10, 2012 for waivers requested from the submission checklist:

#9 site plan submission.

Waiver is recommended as no site plan is proposed and the use is residential.

#20 property owners within 200 feet

Complies

#35 Zoning schedule submission

Condition of approval that the bulk requirements for accessory structures be added to the plan.

#53 identify historical structures within 200 feet

Waiver

55 plan with contours at 20 foot intervals for the entire tract within 100 feet

Condition of approval that the Township Engineer inspect the site to determine if there are any drainage concerns that need to be addressed.

#67 results and locations of percolation tests

Waiver is recommended as no new waste water facilities are proposed.

Mr. Nicholson moved to grant the waivers as discussed and deem the application complete.

Seconded by Mr. Swanson.

Roll Call:

Voting in favor: Barbaro, Carter Nicholson, Shultz, Swanson, White, Goss

Against:

Abstain:

7 yes, 0 - 0

- Falzarano- Public Hearing, application #ZB-12-06, -Bulk Variances for accessory structures, block 33, lot 10, 172 Unionville Road Applicant: Kristen Falzarano

Mr. Passarella submitted 5 additional photos of the site that were marked for the file as "Applicants #1."

Kristen Falzarano testified that when she purchased the property in 2004 there was one detached garage, 1 green house and a pump house. She has since added the following structures: a barn, 2 lean-tos, shed and two car detached garage. The garages are used for personal use to house 2 vehicles plus 9 collectable cars. Photos were submitted and marked as "applicant #2." The location of the garage was selected because it did not require the removal of any trees or addition of fill dirt and the asphalt was already there. All accessory buildings match the house and are aesthetically pleasing. The shed houses lawn equipment. The stables were added in May of 2004 to provide shelter for their two horses. In addition, she did add two lean tos.

The applicant testified that there are two horses on the property. Variances are required for the setback and number of stables/shelters on the property (96-46D and 96-80A(14)). The subject property is sufficiently sized, 4.662 acres, to accommodate the 2 horses in accordance with ordinance 96-46A.

Mrs. CuvIELLO testified the following variances are being requested:

- 1) 3 detached garages- where one detached garage is permitted not to exceed an area of 900 square feet
- 2) 8 ft separation between the two garages where 15 ft is required
- 3) Stable – permit a 12 foot setback where 75 feet is required to house large animals. (the parcel, in this section is 150 ft wide in that area, stable off set to one side to allow access around and also to preserve existing tree stand.
- 4) Shelter setbacks (lean-to) for 2 horses, each 100 sq ft, since they are used for horses, the structures require 75 sq ft setback from property line where one is setback 10 feet & one is setback 37 feet
- 5) shed -10x12 3 ft from eastern property line where 10 feet is required
- 6) number of accessory structures. 5 accessory structures that are 200 sq ft or less where Ordinance permits one accessory structure

Mrs. CuvIELLO, referring to photos further testified the lot is 4.6 acres in a zone that requires 80,000 sq ft. This size lot allows them to have the horses. The stables were placed in the rear of the property because this is the highest area on the parcel and it allowed for an open green space in front for the horses to graze. Photos were submitted. The shape of the lot, width of 150 sq ft, would make it impractical to fit the stables in that location and meet the setback requirements of 75 feet. To conform, the stables would need to be moved closer to the house which would close in the property and take away the open space. The two lean-tos are placed behind the stables for the purpose of aesthetics and so not to be visible to the neighbors or anyone accessing the properties. All the structures are complementary and match the main house. To relocate the stables to meet the required setbacks, would make them visible and not as accessible to the area where the horses are kept. The shed, variance for setback to property line, is placed on the opposite side of the driveway next to pump house. There is an existing tree stand along the property line that is higher and taller than the existing accessory structures which minimizes the view of the structures along the property line. Variance for total number of structures – the structures are placed in an area not visible. The shed is a reasonable and normal structure associated with a single family residence. The pump house is necessary to protect and keep the equipment out of the weather which is sided and compliments the house. The sheds and green house are smaller structures typically associated with residential uses.

The second detached garage is used to house collectable cars as well as their personal vehicles along with lawn equipment used to maintain the property.

The buildings and their placement were all designed to be complimentary to one another, maintain adequate light, air and open space and not cluster them to overpower the property. There is no substantial detriment to the zoning ordinance due to the size of this property. The ordinance permits a 20 percent impervious coverage (total area of all pavement & buildings) and currently this site has a 13 percent impervious coverage. Additionally, township ordinance allows a 15 percent building coverage and this site with all the buildings has a 3 percent building coverage. Therefore there is no substantial detriment to the zoning ordinance as their house is setback over 350 feet from the street and everything located on this property is shielded from the view of the general public. There is no substantial detriment to the public good based upon the placement and location of the structures.

Mrs. Bruder added that all the items outlined in her letter of October 10, 2012 have been addressed. She recommended that a condition of any approval include that none of the structures can be used for a business/commercial use. Mr. Passarella responded that his client's waterproofing business is located on the Blackhorse Pike in Washington Township and all their equipment is stored at that site. No customers come to their personal residence (they go to the customer's home) nor do they advertise with that address. The name of their business is S.J. Waterproofing.

For the record, Mrs. Adams confirmed with the planner that by township ordinance the Applicant's lot is large enough for two horses, but no more. The applicant also testified that there is no plumbing in the second detached garage. Solar lights are used in the barn and the garage.

Chairman Nicholson asked for clarification of the non-conforming variances being requested. Board Attorney, Mrs. Adams, explained the structures were built after the zoning ordinance was passed and because no variances were granted, none are considered "non-conforming" but are basically "illegal" structures. The term "non-conforming" means it was legal at the time it was built but over the passage of time it became not in accordance with the ordinance. Based on the information the board was given, certain structures were there when the Falzarano's purchased the property. Chairman added that if granted, it must be clear that any future owner cannot use these structures

Mayor Barbaro asked the applicant if they had met with the zoning officer or construction office prior to construction of the detached garage. The applicant testified they had made telephone inquiries about the barn and about having horses on the property before they made the purchase. The applicant testified she did not realize pre-manufactured buildings required construction permits.

Mrs. Bruder and Mr. Gaskill had no other comments. Mrs. Adams added should the Township Engineer discover any storm water issues, the applicant would be required to correct the issues.

Mayor Barbaro recommended that a condition of any approval include that the applicant secure the proper construction permits for the buildings she added to the property. Applicant agreed.

Mr. Carter moved to open to the public, seconded by Mrs. White. With all members in favor, the motion was carried.

Ed Poisker, 617 Whig Lane Road

Commented that with a pre-engineered building delivered on the back of a truck, like a shed, it is understandable that someone may not think they needed a construction permit or that there were certain setbacks to be met. However, with a large garage, they should have inquired about the permitting process. Mr. Poisker also inquired about the current horse ordinance and Mrs. Adams responded. Further, he added that perhaps the ordinance needs to be changed for larger parcels.

Board Attorney commented that it is not the Planning Board's job to make new law (ordinances) that is up to Township Committee. The board's job is to evaluate the testimony tonight, determine if the applicant has met the legal standard and then make a decision as to whether or not the applicant is entitled to the relief requested.

Mayor Barbaro moved to close to the public, seconded by Mrs. White. With all members in favor, the motion was carried.

Discussion followed and Board members commented about the ongoing frustration of applicants appearing before the board after being cited and then requesting the relief. Mrs. Bruder added that perhaps township committee should consider reviewing the accessory structure ordinance.

Mrs. White moved to grant the bulk variances to permit the additional existing accessory structures conditioned upon all the affirmative representations of the applicant, recommendations of the board's professionals, and the conditions attached by the board members. Seconded by Mr. Shoultz.

Roll Call:

Voting in favor: Barbaro, Carter Nicholson, Shoultz, Swanson, White, Goss

Against:

Abstain:

7 yes, 0 - 0

➤ General Public Portion

Mrs. White moved to open the general public portion, Seconded by Mr. McCreery. With all members in favor, the motion was carried. With no comment from the public, Mrs. White moved to close the general public portion, seconded by Mr. Nicholson. With all members in favor, the motion was carried.

➤ Adjournment:

Mrs. White moved to adjourn, Seconded by Mr. Nicholson.

With all members in favor, the motion was carried.

Adjournment time: 9:32 pm

Respectfully submitted,



Anna Foley, Board Secretary